LIBRARY
SUPREME COURT, U. S.

FILED
OCT 27 1973
MICHAEL RODAK, JR., CLERK

No. 73-241

In the
# Supreme Court of the United States
OCTOBER TERM, 1973

CHICAGO MERCANTILE EXCHANGE,
*Petitioner,*

*vs.*

DARRYL B. DEAKTOR,
*Respondent,*

and

CHICAGO MERCANTILE EXCHANGE,
*Petitioner,*

*vs.*

AL PHILLIPS, JR., et al.,
*Respondent.*

## REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

LEE A. FREEMAN
LEE A. FREEMAN, JR.
JEROLD E. SALZMAN
*Attorneys for The Chicago Mercantile Exchange*

FREEMAN, FREEMAN & SALZMAN
One IBM Plaza—Suite 3200
Chicago, Illinois 60611
Telephone: (312) 467-6540

© The Schaffer Press, Inc.—(312) 263-6250

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-241

CHICAGO MERCANTILE EXCHANGE,

*Petitioner,*

*vs.*

DARRYL B. DEAKTOR,

*Respondent,*

and

CHICAGO MERCANTILE EXCHANGE,

*Petitioner,*

*vs.*

AL PHILLIPS, JR., et al.,

*Respondent.*

**REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

The brief filed by the *Phillips* respondents underscores the need for administrative consideration of this case before it is entertained by the federal court.

The complaint in *Phillips* is bottomed upon the allegation that the Chicago Mercantile Exchange ("CME")

violated the provisions of the Commodity Exchange Act and CME's own rules by the procedures that CME's Business Conduct Committee implemented to prevent a manipulation of the March 1970 fresh eggs futures contract. Although respondents have labored to portray this case as involving "conspiracy" and "denial of due process," the fact remains that this lawsuit concerns solely the performance of CME's statutory duty of self-regulation.

The events giving rise to the complaint may be briefly described. On March 17, 1970, the Business Conduct Committee was alerted to facts that suggested a possible manipulation of the March 1970 fresh egg futures contract. At that point in time 2,455 contracts were unliquidated and only two trading days remained (Complaint ¶38). The Business Conduct Committee met on the evening of March 17 and, after investigation, ordered clearing members who controlled unusual concentrations of long or shot positions to liquidate half of their positions.

Respondents charges that the Business Conduct Committee made this ruling without the requisite notice and opportunity to be heard as provided in CME's Rule 217(D) and that its ruling was not properly promulgated. On the contrary, CME contends that its decision was correct and that its procedures accorded with CME's rules relating to "emergency" situations, *i.e.*, Rules 908, 1229 and 1230.

The ultimate question is whether CME's actions were appropriate to meet the critical situation that arose on March 17, 1970.* This is the type of dispute that should be resolved by the administrative agency having ultimate authority over the CME's duty of self-regulation and re-

sponsibility for enforcement of the Commodity Exchange Act.

For the reasons set forth in the Petition, this Court should grant certiorari and reverse the decision of the Court of Appeals for the Seventh Circuit.

Dated October 25, 1973

Respectfully submitted,

LEE A. FREEMAN
LEE A. FREEMAN, JR.
JEROLD E. SALZMAN
*Attorneys for The Chicago Mercantile Exchange*

FREEMAN, FREEMAN & SALZMAN
One IBM Plaza
Suite 3200
Chicago, Illinois 60611
(312)-467-6540

---

* It is frivolous to claim that respondents and the hundreds of other persons holding the 2,455 open contracts as of March 17, 1970 had to be notified and afforded a hearing prior to legitimate action by the CME. Neither the Commodity Exchange Act or the CME's rules require such notice and hearing. The practical reasons are obvious: (1) There is simply no time to conduct public hearings in an emergency situation created by an apparent manipulation of the market two days before the close of the contract; (2) The persons with open contracts change so rapidly that it would be impossible to inform everyone; and (3) The announcement of such meeting itself would likely have a deleterious market affect.